

IN THE MICHIGAN COURT OF APPEALS

ORDER

Re: **Richard M. Goodman v Marjorie J. Dahringer**

Docket No. **273680**

L.C. No. **05-021362 CZ**

Michael R. Smolenski, Judge, acting under MCR 7.217 and MCR 7.219(I),
orders:

On March 21, 2008, the Supreme Court remanded this case to this Court with the direction “to provide an explanation, to be filed with the Clerk of [the Supreme Court] within 42 days of the date of this order, of why [the Court of Appeals] has jurisdiction over this case, given its procedural history.”

This appeal was first involuntarily dismissed under MCR 7.217 on February 8, 2007, because appellant’s attorney failed to timely file the docketing statement required by MCR 7.204(H). On appellant’s timely motion for reinstatement, and given this Court’s receipt of the docketing statement, the appeal was reinstated on March 19, 2007, by an order that stated in full: “The motion for reinstatement of appeal is GRANTED. The appellant’s brief shall be filed within 14 days of the Clerk’s certification of this order.”

Despite the unambiguous language of the order, appellant’s brief was not filed within 14 days of March 19, 2007. Neither was the brief filed within 21 days of a subsequent warning letter. As a consequence, the appeal was again involuntarily dismissed under MCR 7.217 on June 22, 2007. However, on appellant’s July 11, 2007, motion for reinstatement filed simultaneously with the overdue brief, this Court entered an order reinstating the appeal for a second time.

On remand from the Supreme Court for an explanation why this Court has jurisdiction over this case given its procedural history, and following this Court’s further consideration of the facts and circumstances of this appeal, this Court advises that upon an opportunity to reconsider the July 2007 motion for reinstatement this Court would deny the July 11, 2007, motion for reinstatement for failure to establish “mistake, inadvertence, or excusable neglect” under MCR 7.217(D). This Court’s March 19, 2007, order clearly stated

the deadline for filing appellant's brief. Appellant's motion for reconsideration did not acknowledge the deadline stated in the order, let alone state facts in support of its mistake, inadvertence or excusable neglect in failing to comply with the clear directive in the order. Submission of the overdue brief should not have been viewed as superceding these facts.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

MAY - 1 2008
Date

Sandra Schultz Mengel
Chief Clerk